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7 Times Square, New York, NY 10036 Tel: 212-421-4100 Fax: 212-326-0806

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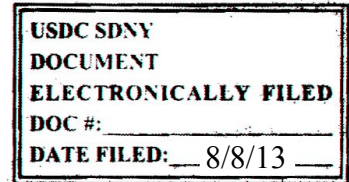
**Ilene S. Farkas**  
Partner

Direct Tel: 212-326-0188  
Direct Fax: 212-798-6382  
ifarkas@pryorcashman.com

August 8, 2013

**VIA E-MAIL: (Netburn\_NYSDChambers@nysd.uscourts.gov)**

Honorable Sarah Netburn  
United States District Court  
Southern District of New York  
40 Foley Square, Room 219  
New York, NY 10007



**Re: Capitol Records, LLC d/b/a EMI Music North America v.  
Escape Media Group, Inc., 12 Civ. 6646 (AJN)(SN)**

Dear Judge Netburn:

We are counsel for Plaintiff Capitol Records, LLC d/b/a EMI Music North America ("EMI") in the above-captioned action and submit this letter regarding scheduling matters in this action. We do not seek any extension of the current November 8, 2013 trial ready date in the action, nor of the September 30, 2013 date for the end of expert discovery (or the date for dispositive motions as well). However, we believe that the Court and the parties may be saved significant time and motion practice by an internal adjustment of the August 16, 2013 fact discovery cut-off to allow for fact discovery to continue (concurrently with expert discovery) until September 30, 2013. We have raised this issue with counsel for defendant Escape Media Group, Inc. ("Escape"), who has stated that they "do not assent" to our suggested extension.

While Your Honor has scheduled a Conference for Tuesday, August 13<sup>th</sup> to address the more discrete issue of whether information in another action should be shared in this action, we felt it necessary to immediately bring this request the Court's attention in order to avoid motion practice and to otherwise protect our client's rights.

This action was commenced on August 30, 2012. The discovery cutoff was extended just before the Settlement Conference held before Your Honor on February 6, 2013 in order to give the parties time to pursue a resolution of this matter. On March 14, 2013, the parties jointly requested and were granted a 45 day stay of all proceedings in this Action. After the conclusion of this stay, Judge Nathan entered a new Scheduling Order on May 17, 2013, which currently is in place in this Action, after settlement talks proved unsuccessful. Since that time, Escape has stipulated as to liability on EMI's breach of contract claim, thus narrowing the issues and claims for trial.



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The parties have been actively engaged in discovery, and have been working together to resolve their discovery disputes. The parties have had multiple meet and confer discussions each week over the past several weeks in an effort to narrow down the outstanding discovery disputes. The parties are hopeful that they can resolve most of their discovery issues. In fact, in a recent meet and confer, counsel for Escape indicated a willingness to share portions of certain deposition transcripts from the *Arista v. v. Escape Media*, (TPG) 11-CV-8407 (S.D.N.Y.) (the “Arista Action”) case referenced in the prior correspondence to Judge Nathan. The parties have also discussed streamlining the production of certain documentary evidence requested by EMI through the production of information already produced in other actions in which Escape is a defendant. While EMI is hopeful that such discovery will be shared, and believes that such information will greatly (or entirely) reduce the need for such information to be gathered and produced again in this action, EMI will still need some time to review these transcripts and information to determine whether any additional testimony or information will be relevant. The depositions of Escape’s Rule 30(b)(6) witnesses are currently scheduled for next Tuesday and Wednesday, August 13<sup>th</sup> and 14<sup>th</sup>, out of necessity; however, EMI is concerned about its ability to meaningfully conduct these depositions when significant information is being produced daily, and certain information has yet to be produced, possibly requiring motions to compel.

In the event the parties cannot resolve their discovery issues, EMI will seek the Court’s assistance, but EMI believes that allowing time to continue the dialog in order to narrow those issues (rather than engage in motion practice) will be beneficial to the parties and the Court.

Quite frankly, Your Honor, despite the parties’ significant efforts over the past few months, the parties are running out of time and, despite these efforts, EMI does not have sufficient time to review discovery materials that are coming in daily, seek the Court’s assistance by moving to compel information that has not yet produced and conduct the necessary depositions before next Friday’s cutoff.

We are cognizant that, prior to transferring this matter to Your Honor for scheduling purposes, Judge Nathan had indicated on the last Scheduling Order that she would not grant further extensions, and we believe that this request does not conflict with the spirit of her Order. The trial ready date and dispositive motion dates will remain unchanged. Moreover, we believe that without this extension, the inevitable motions to compel will have the effect of delaying the schedule further than if the parties are afforded just a few weeks to work out the discovery conflicts and obtain missing documents.


Accordingly, EMI respectfully requests that the fact discovery cutoff be extended until September 30, 2013, with all remaining dates in the May 17<sup>th</sup> Case Management Order remaining the same. A Proposed Revised Case Management Plan is attached.



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We thank the Court for its attention to this matter. We are available at the Court's convenience should Your Honor wish to discuss this matter further, whether in person or via telephone.

Respectfully,

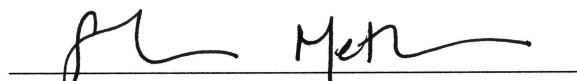
  
Hene S. Farkas

Attachment

cc: Counsel for Escape (via Email)

Deposition discovery is stayed pending the Court's conference on August 13, 2013. At that conference, the Court will amend the discovery schedule to allow time for the parties to complete depositions. Nonetheless, the parties should continue working to resolve their outstanding discovery issues.

**SO ORDERED.**

  
SARAH NETBURN  
United States Magistrate Judge

New York, New York  
August 8, 2013